IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1031 OF 2004

Brijesh Kumar .....Petitioner.

Versus

Civil District Judge and Others. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Sharad Sharma, counsel for the petitioner.

Briefly stated, the respondent no. 2 has filed suit for eviction of the petitioner and also far a decree for arrears of rent pendentelite and future interest. During the pendency of the suit, the petitioner has filed an application on 27th May, 2004 stating that he has complied with the provisions of Section 20 (4) of the U.P. Act No. 13 of 1972 by depositing the entire arrears of rent as required by Sub-clause (4) of Section 20. On the said application, an order was passed that the application itself shall be disposed of along with the main suit. On another application for deciding the said issue as a preliminary issue, the order was passed by the Presiding Officer that since it is a question of evidence, therefore, the same shall be decided along with the final disposal of the suit itself.

Section 20 (4) of U.P. Act No. 13 of 1972 provides that the tenant shall be relieved against his liability for eviction on that ground.

The order passed by the court below, therefore, is not a final order and has been passed only at the inter-locutary stage. In a suit under Section 20 of the Act, Sub-clause (4) gives a protection to the tenant while deciding the suit itself.

The suit has to be decided on other grounds as well and where the question of arrears of rent comes, the court gives the immunity of eviction to the tenant by relieving him from the eviction.

The view of the above, the order impugned being inter-locutary order does not affect the rights of the petitioner, the question of relieving the petitioner, therefore, shall be adjudicated along with the suit itself and if the trail court has reason to believe that the petitioner has complied with the provisions of Act No. 13 of 1972, an issue shall be framed to that effect, which shall be decided along with the suit itself.

Subject to the aforesaid observation, writ petition is disposed of.

(RAJESH TANDON, J.)

29.10.2004
P.S.R.